



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

साप्ताहिक
WEEKLY

सं. 16] नई दिल्ली, जुलाई 7—जुलाई 13, 2013, शनिवार/आषाढ़ 16—आषाढ़ 22, 1935
No. 16] NEW DELHI, JULY 7—JULY 13, 2013, SATURDAY/ASHADHA 16—ASHADHA 22, 1935

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके ।
Separate Paging is given to this Part in order that it may be filed as a separate compilation.

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 14 मई, 2013

आ.अ. 36.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग, 2009 की निर्वाचन अर्जा संख्या 16 में इलाहाबाद उच्च न्यायालय के तारीख 10 अप्रैल, 2013 के निर्णय को एतद्वारा प्रकाशित करता है ।

(निर्णय इस अधिसूचना के अंग्रेजी भाग में छपा है ।)

[सं. 82/उ.प्र.-लो.स./16/2009 (इला.)]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 14th May, 2013

O.N. 36.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 10th April, 2013 of the High Court of Judicature at Allahabad in Election Petition No. 16 of 2009.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL SIDE

ORIGINAL JURISDICTION

Allahabad, Dated the 10th April, 2013

PRESENT:**THE HON'BLE SUDHIR AGARWAL.****....JUDGE.****ELECTION PETITION NO. 16 OF 2009.****ORDER ON THE PETITION OF RAJENDRASINGH YADAV.****IN RE:**

Rajendra Singh Yadav S/o Sri Sheetal Singh
R/o House No. 155/229, G.T. Road, Shiv Katra, Post- Harjender Nagar,
District- Kanpur Nagar.

....Petitioner.**VERSUS**

Raja Ram Pal S/o Ram Nath R/o Village- Siroh,
Post-Padari Lalpur, Tehsil- Ghatampur, District- Kanpur Nagar.

....Respondent.

Counsel for the Petitioner : In Person, C. N. Tripathi, Sri M. P. Mishra, Sri N.K. Pandey, Sri P. D. Tripathi, Smt. Sudha Pandey.

Counsel for the Respondents : Km. Akanksha Yadav, Sri Prem Prakash.

BY THE COURT**AFR****Reserved on 02.04.2013****Delivered on 10.04.2013****Court No. - 34****Case :— ELECTION PETITION No. - 16 of 2009****Petitioner :** Rajendra Singh Yadav**Respondent :** Raja Ram Pal**Petitioner Counsel :** In Person, C.N. Tripathi, M.P. Mishra, N.K. Pandey, P.D. Tripathi, Smt. Sudha Pandey**Respondent Counsel :** Km. Akanksha Yadav, Prem Prakash**Hon'ble Sudhir Agarwal, J.**

1. This election petition has come up in respect of Parliamentary Election of 44, Akbarpur Parliamentary Constituency held along with General Elections of Parliament in 2009 and seeks to assail election of respondent Raja Ram Pal, a candidate returned elected in the aforesaid election.

2. The facts, relevant to give rise the present dispute, travel in a narrow zone, and, briefly stated, as under.

3. The Election Commission (hereinafter referred to as "EC") published a notification dated 02.03.2009 under Section 14 of Representation of People Act, 1951 (hereinafter referred to as "Act 1951") to constitute 15th Lok Sabha by calling respective Parliamentary Constituencies of India to elect their representatives. Election programme was to proceed in five phases.

4. At Kanpur, there are two parliamentary constituencies namely, 43-Kanpur Parliamentary Constituency (for short "43 KPC") and 44, Akbarpur Parliamentary Constituency (for short "44 APC").

5. 44 APC has five Assembly Constituencies, namely, (1) 206, Akbarpur Rania Legislative Assembly Constituency, (2) 210 Bithoor Legislative Assembly Constituency, (3) 211 Kalyanpur Legislative Assembly Constituency, (4) 217 Maharajpur Legislative Assembly Constituency and (5) 218 Ghatampur (Reserve) Legislative Assembly Constituency.

Out of five legislative assembly constituencies, four namely, except 206 Akbarpur-Rania Legislative Assembly Constituency, come within territorial jurisdiction of District Kanpur Nagar while 206 Akbarpur Rania Legislative Assembly Constituency is part of territorial jurisdiction of District Kanpur Dehat.

6. 43 KPC consists of five Assembly constituencies, namely, Govind Nagar Assembly Constituency, Kidvai Nagar Assembly Constituency, Chhaoni Assembly Constituency, Shisha Mau Assembly Constituency and Arya Nagar Assembly Constituency.

7. ECI in exercise of powers under Section 21 of Act 1951 appoints Returning Officers (hereinafter referred to as "RO"). Sri Rajeev Sharma, the then Chief Development Officer, Kanpur Nagar was appointed RO for holding election of Member of Parliament from 44 APC while Sri Anil Kumar Sagar, the then District Magistrate, Kanpur Nagar was appointed as RO for holding election of Member of Parliament from 43 KPC. Similarly, an Assistant Returning Officer (for short "ARO") under Section 22 of Act, 51 was appointed for each of the two constituencies. Sri Raj Kumar, S.D.M. Sadar Kanpur was appointed ARO for 44 APC while Sri Ram Abhilash Patel, Additional City Magistrate, Kanpur was appointed ARO in respect of 43 KPC.

8. Sri Anil Kumar Sagar, the then District Magistrate, Kanpur Nagar was also appointed as District Election Officer.

9. Election programme was notified by RO for 44 APC giving election programme as under:

S. N.	Particulars of programme	Date
1	Date of filing nomination paper	From 2nd to 9th April 2009 (11 AM to 3 PM)
2	Date of Scrutiny	11th April 2009
3	Last date of withdrawal of nomination paper	13th April 2009
4	Date of polling	30th April 2009
5	Date of counting of votes and declaration of result	16th May 2009

10. The RO of 43 KPC also notified election programme having similar schedule. The petitioner filed his nomination paper on 9th April 2009 which was the last date for filing nomination paper. It is said that the aforesaid nomination paper was presented to RO 43 KPC at about 2:51 PM, on 9th April 2009. He was also administered oath by RO, while receiving nomination papers. He also issued a receipt of filing of such papers, mentioning 43 KPC.

11. However, on 11th April 2009 nomination paper of election petitioner was rejected by Sri Anil Sagar, RO, 43 KPC, and thereafter, elections proceeded. Polling took place on 30th April 2009 in both the constituencies and result was declared on 16th April 2009 wherein respondent was declared elected for 44 APC.

12. The election of returned candidate has been assailed on the ground that nomination paper of petitioner was rejected illegally and improperly by RO, 43 KPC, who committed illegality, firstly, in receiving nomination paper pertaining to 44 APC, and, thereafter by retaining the same and rejecting it. It is said that provisions of Act 1951, Rules made thereunder as also the Orders issued from time to time by ECI was not complied with and, therefore, election of returned candidate is materially affected. It is also pleaded that the petitioner is resident of house no. 155/229, G.T. Road, Shiv Katra, Post- Harjender Nagar, P.S.- Chakeri, District- Kanpur Nagar and recorded elector at serial no. 1249, Part 147, Electoral Roll of 217- Maharajpur Assembly Constituency. Nomination paper filed on 9th April 2009 clearly mentioned 44 APC and was complete in all respects. Time for presenting nomination paper before RO was between 11 AM to 3 PM, on the prescribed dates. Since the petitioner was an independent candidate, his nomination paper accompanied particulars and signatures of 10 proposers who all were electors from 211 Kalyanpur Legislative Assembly Constituency. Details of Proposers have been given in para 23 of Election Petition. While issuing notification under section 30 of Act 1951, fixing date and place of filing nomination paper, District Election Officer, Kanpur Nagar assigned court of District Magistrate, Kanpur Nagar as venue for receiving nomination papers in relation to 43 KPC and another room, next to the Court of District Magistrate, Kanpur, was assigned to RO for 44 APC so as to receive nomination papers relating to that constituency. 9th April 2009 being last date for filing nomination, there was a huge crowd from very beginning i.e. from 11 AM to 3 PM. Both the rooms are situated adjacent to each other. The candidates relating to both the constituencies were waiting for their turn for presenting nomination papers and got mixed up with each other. It became difficult to recognise as to which of the R.Os., out of the two Parliamentary Constituencies, was receiving nomination papers of which constituency, and, it was in these circumstances, though the petitioner filled nomination paper with all particulars, for contesting election from 44 APC, but in utter confusion, entered the room of RO of 43 KPC, and his nomination paper was received by Sri Anil Kumar Sagar, RO at about 2:51 PM on 9th April 2009. He also administered oath at 2:51 PM to petitioner. Since nomination paper was complete in all other respects, ARO issued a receipt, a copy whereof has been placed on record as Annexure-II in which it was

mentioned that the petitioner Rajendra Singh Yadav has presented nomination paper, serial no. 42 in respect of 43 KPC and scrutiny thereof shall be made on 11th April 2009. He also issued a certificate of oath and therein also 43 KPC was mentioned.

13. It is further pleaded that petitioner's name was called on by ARO of 43 KPC for serving copy of register meant for candidates expenses at around 2:54PM. The petitioner pointed out to him that he is a candidate for 44 APC and the ARO has illegally received his nomination paper, whereupon RO and ARO, of 43 KPC, sent nomination paper of petitioner to RO and ARO of 44 APC which was in the next room. It is further pleaded that RO and ARO of 43 KPC told the petitioner that nomination paper having been sent to RO and ARO of 44 APC, the petitioner may collect his register of expenses from RO of 44 APC. Thereupon petitioner appeared before RO and ARO of 44 APC and told that he was sent by RO and ARO of 43 KPC for receiving register meant for the candidate's expenses. Thereafter, RO and ARO of 44 APC had a telephonic talk with RO and ARO of 43 KPC and asked the petitioner to wait for sometime. He (RO, 44 APC) also informed that oath having already been administered, no fresh oath is required. The petitioner since has filled nomination paper mentioning 44 APC, therefore, RO and ARO, 44 APC did not take new nomination paper from him. After 3 PM, the petitioner came to know from RO and ARO, 44 APC that they had returned petitioner's nomination paper to RO and ARO of 43 KPC and asked him to enquire therefrom. A notice of nomination in form 3A under the Rules of Conduct of Election Rules, 1961 (hereinafter referred as "Rules 1961") was issued on 9th April 2009 and petitioner's name was shown in the list of candidates, filed nominations for 43 KPC. On 11th April 2009 i.e., date of scrutiny, petitioner personally appeared before RO and ARO, 43 KPC and told, what had happened on 9th April 2009, and also that he is a candidate for 44 APC and not 43 KPC but he did not receive any reply. After 3PM, RO of 43 KPC told him that his nomination paper has been rejected and he may get copy of order from the office. The order says that nomination form was filed in respect of 44 APC and cannot be accepted by RO, 43 KPC, hence, rejected. It also says that the candidate says that he had wrongly submitted there but it was the sole responsibility of candidate. The contention cannot be deemed true and is rejected.

14. The respondent, Raja Ram Pal, the returned candidate, on the notice having been issued by this Court, put in appearance and filed various applications for rejection of the petition, but did not file written statement to contest the Election Petition. After repeated opportunities, while respondent failed to respond by filing his written statement, his right to file the same was ceased vide Court's order dated 10.5.2012. Respondent, thereafter, came with application seeking recall of order dated 10.5.2012, but the said application was also rejected by order dated 5.7.2012. Court thereafter proceeded to frame the issues and on 22.8.2012, following five issues were framed :

- (i) Whether Returning Officer of two different constituencies were having their office in the same room and there was no proper arrangement enabling prospective candidates, who intend to file nomination papers, to find out as to which Returning Officer relates to which Parliamentary constituency.
- (ii) Whether election petitioner submitted his nomination paper before appropriate Returning Officer authorized to receive nomination papers in respect of the Parliamentary election of 44 Akbarpur Parliamentary Constituency for which election petitioner intended to contest the election.
- (iii) Whether nomination paper submitted by election petitioner was rightly rejected by Returning Officer.
- (iv) Whether procedure prescribed in law was followed by concerned Returning Officer before rejection of election petitioner's nomination.
- (v) If the nomination is found to be rejected wrongly, its effect on the election of respondent Returned Candidate and to what relief election petitioner is entitled.

15. Subsequently, two more issues were framed vide order dated 19.9.2012 as under:

- (vi) Whether the Returning Officers of two different Parliamentary Constituency, i.e., 43-Kanpur Nagar Parliamentary Constituency and 44-Akbarpur Parliamentary Constituency were sitting in same room or in the adjoining room?
- (vii) Whether the Returning Officer of 43-Kanpur Nagar Parliamentary Constituency has legally and validly received the nomination paper of election-petitioner on 09-04-2009 relating to 44-Akbarpur Parliamentary Constituency?

16. Since the respondent, thereafter, continued to participate in the proceedings, parties were permitted to lead their evidence, documentary and oral.

17. Election-petitioner himself deposed statement as PW-1 and in defence, summons were issued on the request of respondent to Sri Anil Kumar Sagar, Sri Ram Abhilash Patel, Sri Rajeev Sharma, Sri Raj Kumar, Sri Manoj Kumar, Smt. Uma Chandel and Sri Abhay Singh.

18. In fact, respondent filed an application requesting for summoning nine witnesses without specifying as to in what capacity those witnesses were to be summoned. In the circumstances, a statement of learned counsel for respondent was recorded under Order X Rule 2 C.P.C. that he proposes to summon them as defence witnesses. Noticing this statement, this Court passed order on 14.2.2013 permitting Sri Anil Kumar Sagar, the then Returning Officer of 43 KPC, Sri Ram Abhilash Patel, the then ARO of 43 KPC, Sri Rajeev Sharma, the then Chief Development Officer, Kanpur Nagar/RO of 44 APC, Sri Raj Kumar, the then ARO of 44 APC besides three private individuals, to be summoned as defence witnesses, but the officials who were posted as Observers were not found relevant for the dispute in case and the application for summoning them was rejected. Subsequently, the counsel for respondent discharged two witnesses, namely, Ram Abhilash Patel and Sri Raj Kumar without examining them and, therefore, only five witnesses in defence were examined.

19. Besides above, on an application of election-petitioner, the videography C.D. in respect to 43 KPC/44 APC, of the date on which the election-petitioner filed his nomination was also summoned. Sri M.P. Agarwal, District Magistrate, Kanpur Nagar along with his affidavit submitted two C.Ds. which have been taken on record. The original nomination paper, along with its supported documents, and, the orders of RO/ARO have also been placed on record.

Findings: Issues 1 and 6

20. Sri N.K. Pandey, learned counsel for election-petitioner, contended that the place for filing nomination paper was Collectorate, Kanpur Nagar, where, in two adjoining rooms, ROs and AROs of two constituencies, namely 43 KPC and 44 APC were sitting receiving nomination papers, filed by respective candidates. The RO and ARO of 43 KPC were in the Court Room of District Magistrate, Kanpur Nagar and that of 44 APC, the RO and ARO(s) were sitting and receiving nomination papers in the adjoining room. This fact is admitted by election-petitioner himself inasmuch in his oral deposition, the election-petitioner said:

“संसदीय क्षेत्र 43 और 44 के कक्ष अगल-बगल और अलग-अलग थे।”

“Nomination rooms for parliamentary constituencies 43 and 44 were adjacent and separate.”

(English Translation by the Court)

21. Same statement has been made by election petitioner in his affidavit also, as under:

“दोनों संसदीय क्षेत्रों का नामांकन जिलाधिकारी कानपुर, नगर के कार्यालय कैम्पस में था। दोनों संसदीय क्षेत्र के नामांकन प्राप्त करने का स्थान अगल-बगल स्थित कक्ष में था।”

“Nomination papers for both the parliamentary constituencies were to be filed in the office campus of the District Magistrate, Kanpur Nagar, Please for receiving nomination papers for both the constituencies were located in adjoining rooms.”

(English Translation by the Court)

22. Thus, it is the own statement of election-petitioner that two ROs of two different constituencies i.e. 43 KPC and 44 APC were having their Office in different rooms and not the same room, though both were adjoining and situate in the campus of office of District Magistrate, Kanpur Nagar. Election-petitioner has attempted to make out a case that there was so much crowd that it was very difficult to find out, which queue is meant for filing nomination paper for 43 KPC and which was for 44 APC. It was also difficult to find out which RO was receiving nomination paper for 43 KPC and which for 44 APC and it is in this state of confusion, he (election-petitioner) entered the Room of Sri Anil Kumar Sagar, RO and Ram Abhilash Patel, ARO and presented his nomination paper to them. He filed his nomination-paper for 44 APC but the aforesaid Officers were competent RO and ARO for 43 KPC and the mistake occurred due to confusion. It was difficult to find out as to which Officer was receiving papers for respective constituencies. However, in his cross-examination, election-petitioner himself has said that in the notice issued for election, it was clearly mentioned as to where the nomination papers have to be filed. This is evident from his own statement, which reads:

“चुनाव के समय जो नोटिस जारी हुआ था जिसमें नामांकन पत्र कहाँ दाखिल करना है उसकी सूचना दी गयी थी मैंने उसे पढ़ा था।”

“I had gone through the notice issued at the time of election wherein it was notified as to where nomination papers were to be filed.”

(English Translation by the Court)

23. Then further he said that a plate showing number of concerned constituency of which nomination papers were to be received in the Office was affixed outside the Office of respective RO, at the time when petitioner had gone to submit nominations paper. This is evident from his following statement :

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“जब मैं नामांकन पत्र प्रस्तुत करने गया था तब रिटर्निंग आफिसर के कार्यालय के बाहर संसदीय क्षेत्र के नम्बर की पट्टिका लगी थी।”

“When I went to present the nomination paper, a plate showing the number of parliamentary constituency was put up outside the office of Returning Officer.”

(English Translation by the Court)

24. This statement of election-petitioner belie his own statement that there was a chaos and complete state of confusion outside the Rooms of two ROs and AROs, and, it was difficult to find out which one was meant for which constituency. When a plate was already affixed outside the room of RO showing number of particular constituency, of which nomination papers were to be received therein, it was a due indication and guidance to the respective candidates. It is not the case of election-petitioner that he could not read the aforesaid plate due to rush of the people since he himself has admitted to have seen such a plate, otherwise there could not have been any occasion to say anything about these plates. That being so, I find no hesitation in answering issues no. 1 and 6 by holding that the ROs of two different constituencies were having their Offices in two different rooms and not the same room. Further there was proper arrangement to guide and enable prospective candidates, who intended to file nomination papers, to find out, which RO relates to which particular parliamentary constituency. The issues no. 1 and 6 are, accordingly, answered against the election-petitioner.

Issues 2 and 7:

25. It is also an admitted case of election-petitioner that he is an elector of 44 APC and filled in his nomination papers to contest the election from 44 APC. He also admits that he presented his nomination papers meant for 44 APC before Sri Anil Kumar Sagar, RO and Ram Abhilash Patel, ARO, who were competent to receive nomination papers for 43 KPC. It is evident from his affidavit stating as under:

“सहायक रिटर्निंग आफिसर श्री राम अभिलाष पटेल एवं श्री अनिल सागर (रिटर्निंग आफिसर) ने याची का नामांकन पत्र लगभग 2.51 बजे रिसीव किया जो स्पष्ट रूप से 44-अकबरपुर संसदीय क्षेत्र के लिए था।”

“Shri Ram Abhilash Patel, Assistant Returning Officer and Shri Anil Sagar, Returning Officer received the nomination paper of the petitioner at about 2:51 p.m., which was evidently for 44 - Akbarpur parliamentary constituency.”

(English Translation by the Court)

26. In his cross-examination also, while admitting that he is a well educated person being agriculture science graduate, capable to read and understand sign boards etc., he admitted to have submitted his nomination paper before Sri Anil Kumar Sagar, the then District Magistrate, who was sitting to receive the nomination papers for 43 KPC. This is evident from his own statement as under:

“मैंने अपना नामांकन पत्र अनिल सागर तत्कालीन डी०एम० कानपुर नगर के यहां दाखिल किया था। ... मैंने 44 अकबर पुर संसदीय क्षेत्र का नामांकन श्री अनिल सागर जो 43 संसदीय क्षेत्र के लिए बैठे थे उनको दिया था, 2 बजकर 51 मिनट पर।”

“I had filed my nomination paper in the office of Anil Sagar, the then DM Kanpur Nagar. I had at 2:51 PM submitted my nomination paper for 44-Akbarpur parliamentary constituency to Shri Anil Sagar, who was deputed for 43 - parliamentary constituency.”

(English Translation by the Court)

27. He also admits that his all Proposers put their signatures before RO, Sri Anil Kumar Sagar and ARO Sri Sri Ram Abhilash Patel and he was also administered oath by the said Officers. DWs 3, 4 and 5 are three Proposers of candidature of election-petitioner and they have also specifically said in their affidavits that they accompanied election-petitioner at the time of submission of nomination-papers, which were submitted in the room meant for 43 KPC on 9.4.2009. Sri Anil Kumar Sagar, the then District Magistrate, Kanpur Nagar and RO of 43 KPC has also deposed statement as DW-1 and has admitted that he was RO for 43 KPC whereof Sri Ram Abhilash Patel was ARO, and Sri Rajendra Singh, election-petitioner presented his nomination paper to him and he administered oath to him. Similarly Sri Rajeev Sharma, the then Chief Development Officer, Kanpur Nagar has also deposed statement as DW 2 and said that he was RO for 44 APC and no nomination paper was submitted by petitioner before him.

28. The “Returning Officers” are contemplated in Section 21 of Act, 1951 and “Assistant Returning Officers” are appointed as provided by Section 22 of the Act, 1951. Section 21 clearly says that for every constituency, the Election Commission, in consultation with the Government of the State, designate or nominate a Returning Officer. It is, thus, very clear that for every constituency, there shall be a separate independent Returning Officer. The number of ARO appointed under Section 22 of Act, 1951 may be more than one, but they are appointed to assist the RO. The two provisions, thus, make it very clear that a RO has to be appointed for a particular constituency and ARO also relates to a particular constituency.

29. Section 33 of Act, 1951 contemplates that each candidate, either in person or by his Proposers, shall deliver to the RO, at the place specified in this behalf in the notice issued under Section 31 of Act, 1951 a nomination paper complete in the prescribed format and signed by the candidate and his Proposers. It is, thus, evident that the candidate has to present nomination paper before RO meant for the constituency from which the candidate proposes to contest election. In the present case, admittedly, the election-petitioner presented his nomination paper to RO and ARO meant for 43 KPC, though petitioner's nomination papers were for 44 APC. Therefore, it cannot be said that he presented or delivered his nomination paper before appropriate RO. Issues no. 2 and 7 are answered in negative, i.e., against the petitioner. It is held that election-petitioner did not submit nomination paper before the appropriate RO competent to receive papers for 44 APC.

Issues 3, 4 and 5:

30. Now the issues no. 3, 4 and 5 may be dealt with together. It is admitted case of petitioner that he presented his nomination paper before RO appointed for 43 KPC. Since he was not RO of 44 APC, the papers were not presented before the competent RO, as contemplated in Section 33 of Act, 1951, by the petitioner at the place and time, notified by RO under Section 31 of Act, 1951. The three Proposers, i.e. D.Ws. 3, 4 and 5, who accompanied petitioner have clearly said that they went along with petitioner only, in one room, where nomination paper was presented and had not gone to any other room. Petitioner has also not shown that he attempted to present another nomination paper before competent RO, i.e., appointed for 44 APC, at any point of time. The election-petitioner though has said, when he realized that nomination paper had wrongly been submitted before an RO and ARO, who were appointed for a different constituency, he went in the Room of RO and ARO of 44 APC who told that the nomination papers shall be sent by the RO and ARO of 43 KPC to competent official of 44 APC, but this fact has not been proved at all. The three Proposers, who accompanied election-petitioner, on the date of presentation of nomination papers, have clearly said that they had not gone to any other room, except one, where nomination paper was delivered and thereafter they came back. The entire story in this regard, sought to be depicted by election-petitioner, has been belied by his own three Proposers who have appeared in witness box as DWs 3, 4 and 5.

31. Sri N.K. Pandey, during the course of argument, could not dispute that a candidate has a responsibility to present his nomination paper before RO who is appointed for the constituency for which nomination paper is to be submitted. In this background, it is evident that petitioner failed to submit nomination paper before competent RO and ARO, who were appointed for 44 APC. Accordingly, RO, 43 KPC had rightly rejected petitioner's nomination which was in respect of a constituency, different, for which the said RO and ARO were appointed, to whom petitioner delivered his nomination paper.

32. Much has been sought to be argued that it was a sheer technical mistake on the part of petitioner and if RO and ARO, 43 KPC were not competent to receive nomination paper of another constituency, they themselves could have forwarded or remitted those papers before RO and ARO of the concerned constituency and having failed to do so, they have committed statutory error. I am not inclined to accept the submission for the reason that nothing has been shown which lay such an obligation upon an RO and ARO, that, if nomination paper of another constituency is submitted by a candidate to them, they shall either return such nomination paper to the candidate concerned for presentation before appropriate authority, or, they themselves shall forward or remit those papers to the concerned RO/ARO. On the contrary, Section 33 of Act, 1951 casts an obligation upon the candidate or his Proposers to submit nomination paper to RO at the place and time, notified under Section 31. The term RO in Section 33, obviously, would be the RO appointed under Section 21 and since an RO is appointed for a particular constituency, reading Section 21 and 33 together, I have no hesitation to hold that the candidate is under a statutory obligation to present his documents of nomination before RO, appointed for the constituency, in which, such candidate proposes to contest election. Where the document is submitted before a RO, not appointed for such constituency for which the candidate intends to contest election, such document having not been delivered or submitted or presented as required under Section 33 of Act, 1951, have to be rejected for the reason that RO of another constituency cannot proceed with the papers of nomination of a candidate meant for a different constituency for which he is not the RO.

33. In view of above, all the three issues, i.e., issues no. 3, 4 and 5, are also answered against the petitioner.

34. Election petition, in the ultimate result, fails and is, accordingly, dismissed.

35. However, there shall be no order as to costs.

Dated: 10-4-2013

Sd/-
SUDHIR AGARWAL, J.
[No. 82/UP-HP/16/2009 (Alld.)]
By Order,
R. K. SRIVASTAVA, Principal Secy.

आदेश

नई दिल्ली, 8 जुलाई, 2013

आ.अ. 37.—यतः, भारत निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ 2 में विनिर्दिष्ट गोवा विधान सभा के साधारण निर्वाचन, 2012 में स्तम्भ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से उनके नाम के सामने स्तम्भ 4 में विनिर्दिष्ट निर्वाचन लड़ने वाले अभ्यर्थी उक्त सारणी के स्तम्भ 5 में दर्शाए गए अनुसार लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदधीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं;

और, यतः उक्त अभ्यर्थियों ने निर्वाचन आयोग द्वारा सम्यक नोटिस दिए जाने के बाद भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण प्रस्तुत नहीं किया है अथवा उनके द्वारा दिए गए अभ्यावेदन पर, यदि कोई हो, विचार करने के बाद, निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई उचित कारण अथवा न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10 क के अनुसरण में निर्वाचन आयोग, एतद्वारा, यह घोषणा करता है कि नीचे की सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति, राज्य की विधान परिषद् अथवा विधान सभा अथवा संसद के दोनों सदनों अथवा संघ राज्य क्षेत्र में सदस्य चुने जाने अथवा होने के लिए इस आदेश की तारीख से तीन वर्ष की अवधि के लिए निरर्हित किए जाते हैं:-

सारणी

क्रम सं०	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र का नाम एवं संख्या	निर्वाचन लड़ने वाले अभ्यर्थी का नाम एवं पता	निरर्हिता का कारण
1.	2.	3.	4.	5.
1.	गोवा विधानसभा के लिए साधारण निर्वाचन, 2012	34 - कुंकली	मारियो मोराइस म० सं० 2348, बेनक्लीम - वाडो, कुंकली सालसेत, गोवा 403 703	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।

[सं. 76/गोवा-वि.स./2012]

आदेश से,

बर्नाड जॉन, सचिव

ORDER

New Delhi, the 8th July, 2013

O.N. 37.—Whereas, the Election Commission of India is satisfied that the contesting candidate specified in column 4 of the Table below at the General Election to the Goa Legislative Assembly, 2012 specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by him, if any, the Election Commission is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order: -

TABLE

Sl. No.	Particulars of Election	Sl.No. & Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
1.	General Elections to the Goa Legislative Assembly, 2012	34 – Cuncolim	Mario Morais H. No. 2348, Bencleam – Vaddo, Cuncolim Salcete, Goa 403703.	Failed to lodge any account of his election expenses.

[No. 76/GOA-LA/2012]

By Order,

BERNARD JOHN, Secy.

2867 GF/12-3

आदेश

नई दिल्ली, 8 जुलाई, 2013

आ.अ. 38.—यतः, भारत निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ 2 में विनिर्दिष्ट महाराष्ट्र विधान सभा के साधारण निर्वाचन, 2009 में स्तम्भ 3 में विनिर्दिष्ट निर्वाचन क्षेत्र से उनके नाम के सामने स्तम्भ 4 में विनिर्दिष्ट निर्वाचन लड़ने वाले अभ्यर्थी उक्त सारणी के स्तम्भ 5 में दर्शाए गए अनुसार लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे हैं;

और, यतः उक्त अभ्यर्थी ने निर्वाचन आयोग द्वारा सम्यक नोटिस दिए जाने के बाद भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण प्रस्तुत नहीं किया है अथवा उनके द्वारा दिए गए अभ्यावेदन पर, यदि कोई हो, विचार करने के बाद, निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई उचित कारण अथवा न्यायोचित्य नहीं है;

अतः अब, उक्त अधिनियम की धारा 10 क के अनुसरण में निर्वाचन आयोग, एतद्वारा, यह घोषणा करता है कि नीचे की सारणी के स्तम्भ 4 में विनिर्दिष्ट व्यक्ति, राज्य की विधान परिषद् अथवा विधान सभा अथवा संसद के दोनों सदनों अथवा संघ राज्य क्षेत्र में सदस्य चुने जाने अथवा होने के लिए इस आदेश की तारीख से तीन वर्ष की अवधि के लिए निरहित किए जाते हैं:—

सारणी

क्रम सं०	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र का नाम एवं संख्या	निर्वाचन लड़ने वाले अभ्यर्थी का नाम एवं पता	निरर्हता का कारण
1.	2.	3.	4.	5.
1	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	32 — मुर्तिजापुर (अ०जा०)	सुभेदार रमेश खंडारे मु० पो० कोठारी वाटिका, प्लॉट सं० 35, मलकापुर, अकोला ता० जिला अकोला ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
2	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	32 — मुर्तिजापुर (अ०जा०)	नारायण गाबाजी घनगांव मु० पो० पिंजार, ता० बारशी टाकली, जि० अकोला ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
3	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	37 — बडनेरा	एड० वर्षा संजय नेरकर 50, सहजानन्द नगर, अर्जुन नगर, अमरावती ।	विधि द्वारा अपेक्षित रीति से और समय के अन्दर अपने निर्वाचन व्ययों का लेखा दाखिल करने में असफल रहे ।

क्रम सं०	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र का नाम एवं संख्या	निर्वाचन लड़ने वाले अभ्यर्थी का नाम एवं पता	निरर्थता का कारण
1.	2.	3.	4.	5.
4	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	59 - रामटेक	ओझा चंद्रभूषण हरिबंस नि० सीतलवाडी, पो० रामटेक, था० रामटेक, जि० नागपुर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
5	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	237 - उदगीर (अ०जा०)	उषा बालभीम मासुरे मु० पोस्ट हाली, ता० उदगीर, जि० लातूर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
6	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	237 - उदगीर (अ०जा०)	गोकर्णा बबनराव जाधव दत्ता सदन, कावाडेकर निवास, सोना नगर लातूर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
7	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	237 - उदगीर (अ०जा०)	जोतिलिरिंग बानडेष्पा देवर्षे देवर्षि निवास, नवास महादेव गली, हवगीस्वामी मठ के नजदीक, मु० पो० उदगीर, जि० लातूर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
8	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	237 - उदगीर (अ०जा०)	मोरे बालाजी रामराव मु० सैयदपुर (बीके०), पोस्ट तालानी, ता० रेनापुर, जि० लातूर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
9	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	237 - उदगीर (अ०जा०)	विजयकुमार तुकाराम तलवारे मु० पोस्ट कुमठा (केएच०) ता० उदगीर, जि० लातूर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।
10	महाराष्ट्र विधानसभा के लिए साधारण निर्वाचन, 2009	237 - उदगीर (अ०जा०)	वेंकट वैजनाथ तुरे मु० पोस्ट शिरूर अनंतपाल, ता० शिरूर अनंतपाल, जि० लातूर ।	अपने निर्वाचन व्ययों का कोई भी लेखा दाखिल करने में असफल रहे ।

[सं. 76/महा.-वि.स./2009]

आदेश से,

बर्नाड जॉन, सचिव

2867 GI/13-4

ORDER

New Delhi, the 8th July, 2013

O.N. 38.—Whereas, the Election Commission of India is satisfied that each of the contesting candidates specified in column 4 of the Table below at the General Election to the Maharashtra Legislative Assembly, 2009 specified in column 2 and held from the constituency specified in column 3 against his/her name has failed to lodge the account of his/her election expenses as shown in column 5 of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice by the Election Commission or after considering the representation made by them, if any, the Election Commission is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column 4 of the Table below to be disqualified for being chosen as and for being a member of either House of Parliament or the Legislative Assembly or Legislative Council of a State or Union Territory for a period of three years from the date of this order: -

TABLE

Sl. No.	Particulars of Election	Sl.No. & Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
1.	General Election to the Maharashtra Legislative Assembly, 2009	32 – Murtizapur (SC)	Subhedar Ramesh Khandare At. Post. Kothari Watika, Plot No. 35, Malakapur, Akola Tq. Dist Akola.	Failed to lodge any account of his election expenses.
2.	General Election to the Maharashtra Legislative Assembly, 2009	32 – Murtizapur (SC)	Narayan Gabaji Ghangaon At. Post. Pinjar Tq. Barshi Takli Dist Akola.	Failed to lodge any account of his election expenses.
3.	General Election to the Maharashtra Legislative Assembly, 2009	37 - Badnera	Adv. Varsha Sanjay Nerkar 50, Sahajanand Nagar, Arjun Nagar, Amravati.	Failed to lodge account of his election expenses within the time and in the manner required by law.

Sl. No.	Particulars of Election	Sl.No. & Name of Assembly Constituency	Name & Address of Contesting Candidate	Reasons for Disqualification
1	2	3	4	5
4.	General Election to the Maharashtra Legislative Assembly, 2009	59 - Ramtek	Ojha Chandrabhushan Haribans R/o Sitalwadi, Po. Ramtek, Th. Ramtek, Dist. Nagpur.	Failed to lodge any account of his election expenses.
5.	General Election to the Maharashtra Legislative Assembly, 2009	237 - Udgir (SC)	Usha Balbhim Masure At. Post Hali Tq. Udgir Dist. Latur.	Failed to lodge any account of his election expenses.
6.	General Election to the Maharashtra Legislative Assembly, 2009	237 - Udgir (SC)	Gokarna Babanrao Jadhav Datta Sadan, Kawadekar Nivas, Sona Nagar Latur	Failed to lodge any account of his election expenses.
7.	General Election to the Maharashtra Legislative Assembly, 2009	237 - Udgir (SC)	Jotilirang Bandeppa Devarshe Devrush Niwas, Navas Mahadeo Galli, Near Havgiswami Math, At. Post Udgir, Dist Latur.	Failed to lodge any account of his election expenses.
8.	General Election to the Maharashtra Legislative Assembly, 2009	237 - Udgir (SC)	More Balaji Ramrao At. Sayyadpur (Bk.) Post Talani, Tq. Renapur, Dist. Latur.	Failed to lodge any account of his election expenses.
9.	General Election to the Maharashtra Legislative Assembly, 2009	237 - Udgir (SC)	Vijaykumar Tukaram Talware At. Post. Kumtha (Kh.) Tq. Udgir, Dist. Latur.	Failed to lodge any account of his election expenses.
10.	General Election to the Maharashtra Legislative Assembly, 2009	237 - Udgir (SC)	Venkat Vaijnath Ture At Post Shirur Anantpal, Tq. Shirur Anantpal, Dist. Latur.	Failed to lodge any account of his election expenses.

[No. 76/MT-LA/2009]

By Order,

BERNARD JOHN, Secy.